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IN THE

Supreme Court of the United States

October Term, 1942

No. 214

STATE OF MICHIGAN, JOHN J. O'HARA, Auditor General for the State of Michigan, COUNTY OF WAYNE, a corporate body politic, JACOB P. SUMERACKI, Treasurer for the County of Wayne, CITY OF DETROIT, a municipal corporation, and ALBERT E. COBO, Treasurer of the City of Detroit,

Petitioners,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

BRIEF FOR PETITIONERS

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STATE OF MICHIGAN, JOHN J. O'HARA, Auditor General for the State of Michigan, COUNTY OF WAYNE, a Corporate Body Politic, JACOB P. SUMERACKI, Treasurer for the County of Wayne, CITY OF DETROIT, a Municipal Corporation, and ALBERT E. COBO, Treasurer of the City of Detroit, *Petitioners*,

v.

THE UNITED STATES OF AMERICA, *Respondent.*

Brief for Petitioners, *City of Detroit*, a Municipal Corporation, and *Albert E. Cobo*, Treasurer of the City of Detroit; *County of Wayne*, a Corporate Body Politic, *Jacob P. Sumeracki*, Treasurer for the County of Wayne; and *State of Michigan, John J. O'Hara*, Auditor General for the State of Michigan.

Official Reports of Opinions Rendered in the Courts Below

The opinion of the District Court (R. 229-243) is reported in 41 *Fed. Supp.* 41.

The opinion of the Circuit Court of Appeals (R. 292-296) is reported in 127 *Fed.* (2*nd*) 64.

Statements of Grounds on Which Jurisdiction of Supreme Court is Invoked

Certiorari granted October, 1942, and jurisdiction invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stat. 938; 28 U. S. C. 347 (a).

Statement of Case

The facts in this matter have, for the most part, been stipulated (R. pp. 100-130-F). The undisputed facts, in so far as they pertain to these Appellants, are as follows:

John P. Paul, a resident of Detroit, Michigan, died intestate, on May 5, 1926 (R. p. 102). On July 5, 1927, Lena Paul, as beneficiary of the estate of John P. Paul, executed and filed in the office of the collector of Internal Revenue, at Detroit, a Federal estate tax return for the estate of John P. Paul, deceased, reflecting a tax liability of $3,450.00, which was duly paid (R. pp. 102, 103). On March 14, 1930, the Commissioner of Internal Revenue notified Lena Paul of a proposed deficiency in Federal estate tax in the sum of $23,271.84, and advised her of her right to file an appeal with the United States Board of Tax Appeals within sixty days from the receipt of such notice (R. p. 103). Pursuant to that notice and to the rights given under the statute, Lena Paul, as beneficiary of the estate of John P. Paul, deceased, filed an appeal before the United States Board of Tax Appeals on May 10, 1930, seeking a reduction of the proposed deficiency (R. p. 103). On November 4, 1932, the United States Board of Tax Appeals entered an order in that proceeding determining that there was an estate tax deficiency due to the United States in the sum of $23,271.84. No appeal was taken from this decision (R. p. 103).

On February 19, 1933, pursuant to the Statutes and Regulations, the Commissioner of Internal Revenue duly assessed against the estate of John P. Paul, deceased, a deficiency in Federal estate taxes in the principal amount of $23,271.84, together with interest thereon in the sum of $8,080.28. No part of the deficiency or interest has ever been paid (R. pp. 103, 104).

At the time of the death of John P. Paul, he, together with his wife, Lena Paul, owned as tenants by the entirety, or held land contracts as tenants by the entirety, on all the parcels of real estate described in the bill of complaint, except parcels 40 to 47, inclusive, as numbered in the bill of complaint. Parcels 40 to 47, inclusive, had been owned by John P. Paul and Lena Paul, his wife, as tenants by the entirety, but less than two years prior to the death of John P. Paul, these parcels had been conveyed without consideration to the Petitioners, Nettie B. Paul and Amelia L. Paul, daughters of the decedent (R. p. 104). By deeds dated February 13, 1931, reciting a consideration of love and affection, Lena Paul, widow of John P. Paul, conveyed all her right, title and interest in and to any and all real estate standing in her name in Wayne County, Michigan, to her children, John W. Paul, Frederick P. Paul, Nettie B. Paul, Amelia L. Paul, Riney T. Paul and Charles P. Paul. There have been mesne conveyances by the children of various parcels of real estate, but none of the real estate described in the bill of complaint has been sold to persons outside of the Paul Family (R. pp. 105, 106).

These Petitioners will omit from this Statement of Facts any statement concerning the mortgage interest of the Petitioner, The Detroit Bank, as the same will be set forth in detail in its brief.

There were City, State and County taxes and assessments due and unpaid at the time the stipulation was

signed, in 1938, on the following parcels: 2(a), 3, 5, 6, 8, 12-19, 21-30, 33, 34, 35, 36, 37, 39, 44-50. These taxes, at the time of the filing of the stipulation of facts amounted to a sum in excess of $70,000.00 (R. pp. 115-129). The latest year's taxes listed in the stipulation of facts were for the year 1937, as taxes for the year 1938 and subsequent years became a lien subsequent to the filing of this stipulation. The real estate in question has been assessed each year so that the taxes involved at the present time amount to a sum considerably in excess of that included in the stipulation filed in July of 1938.

Except as otherwise indicated in the stipulation of facts, the taxes for the years 1930 to 1935, inclusive, due to the State of Michigan and the County of Wayne, were bid in by the State of Michigan on May 3, 1938. The amount of the bid, as shown in the stipulation of facts, bears interest at the rate of 1 per cent per month until paid. Taxes for the years 1936 and 1937, due to the State of Michigan and the County of Wayne, bear interest at the rate of ¾ths of 1 per cent per month from March 1st of the year following the year in which the same became due and payable, in addition to a 4 per cent flat collection fee imposed after January 1st of the year following the taxable year.

Except as otherwise indicated in the stipulation of facts, taxes for all years (including 1937) due to the City of Detroit have been bid in by the City on June 1st of the year following the taxable year. The amount of the City bid, as shown in the stipulation of facts, bears interest at the rate of 8 per cent per annum. All unpaid special assessments due and owing the City of Detroit were bid in by the City and the amount of the bid, as shown in the stipulation of facts, bears interest at the rate of 10 per cent per annum from the date of said bid. The tax and assessment interest of the City of Detroit is confined to the year 1929 and subsequent years. The property upon which

the City of Detroit has a tax and assessment interest for the years 1929 to 1932, inclusive, was bid in by the City of Detroit for the term of 99 years, in June of the year following that in which the tax became due and payable. (Charter of the City of Detroit, Sections 10 and 21, Chapter IV, Title VI, Appendix to Brief, p. 52). The Charter of the City of Detroit was amended in October, 1933, effective with the sale of the 1933 taxes in June, 1934. The unpaid tax lien for the year 1933 and subsequent years was bid in by the City of Detroit in June of the year following that in which the tax became due and payable. Such liens bid in by the City may be foreclosed two years following the sale, which foreclosure proceedings will result in the vesting of absolute title in the City of Detroit if the tax obigation is not paid in the meantime. (See Charter of the City of Detroit, Chapter IV, Title VI, Sections 9, 10, 11, 18, 19 and 21. Appendix to Brief, pp. 53-57).

The notice of the Respondent's tax lien was filed with the Register of Deeds, Wayne County, Michigan, on January 2, 1936, in Lien 5162, dated December 26, 1935 and in the amount of $31,352.12 (R. Exhibit 2, pp. 208-210). This notice did not contain a description of the property upon which the lien was claimed. Notice of the lien was also filed with the Clerk of the District Court on December 30, 1935 (R. Exhibit 1, pp. 206, 207).

Taxes due to the City of Highland Park and the School District of Highland Park are subject to a charge of 1 per cent per month from August 15th to March 1st of the year following the taxable year. On March 1st, the unpaid tax, plus accrued charges of 1 per cent per month, are returned to the County Treasurer. Thereafter the composite amount of city and school taxes, together with the charges, bears interest at the same rate as the County and State taxes, as stated above (R. pp. 114, 115).

Specification of Errors Relied on

The Circuit Court of Appeals erred in the following respects:

1. In affirming the Decree of the District Court.
2. In determining that the lien asserted by the United States was paramount to the lien of the State of Michigan, the County of Wayne and the City of Detroit, even though recorded after the vesting of the lien by the political subdivisions.
3. In determining that the lien referred to in *Section* 315 (*a*) *of the Revenue Act of* 1926 (*Sec.* 427 (*a*) *of the Internal Revenue Code*) is separate and distinct from that imposed by *Section* 3186 *of the Revised Statutes* (*Sections* 3670 *to* 3677 *of the Internal Revenue Code*).

Reference to Statutory Provisions

Constitutional provisions, statutes, provisions of the Charter of the City of Detroit and other authorities are set forth in an Appendix to this Brief, infra, pages 45 to 57.

Question Presented

The question involved, insofar as these Petitioners are concerned, is whether the alleged lien of the United States for estate taxes is subordinate to the specific lien for taxes and assessments imposed by the City of Detroit, County of Wayne, and State of Michigan, and made by the Constitution and statutes of the State of Michigan and the Charter of the City of Detroit, a first lien, prior, superior and paramount to any other lien.

ARGUMENT

The history and construction of the Act and arguments relative thereto are set forth in the Brief filed by The Detroit Bank, A Michigan Banking Corporation, a co-petitioner. Therefore, petitioners will confine their argument to the priority of the lien of the United States of America over the liens of the State of Michigan, the County of Wayne and the City of Detroit for unpaid State, County or City real estate taxes.

I

Notice of the Alleged Lien of the United States Government did not Contain a Description of the Properties Sought to be Reached and, Therefore, Was not Filed as Required by the Statutes of the State of Michigan, and is, Therefore, Invalid as Against the Specific and Complete Tax and Assessment Liens of the City of Detroit, County of Wayne and State of Michigan.

Section 3746 *of the Compiled Laws of* 1929 *of the State of Michigan,* provides as follows:

> "That whenever the collector of internal revenue for any district in the United States, or any tax collecting officers of the United States having charge of the collection of any tax payable to the United States, shall desire to acquire a lien in favor of the United States for any tax payable to the United States against any property, real or personal, within the State of Michigan pursuant to section three thousand one hundred eighty-six (3186) of the revised statutes of the United States, he is hereby authorized to file a notice of lien, setting forth the name and the residence or business address of such taxpayer, the nature and the amount of such assessment, and a description of the land

upon which a lien is claimed, in the office of the register of deeds in and for the county or counties in Michigan in which such property subject to such lien is situated; and such register of deeds shall, upon receiving a filing fee of fifty (50) cents for such notice, file and index the same in a separate book, entitled 'Record of United States Tax Liens,' indexing the same according to the name of such taxpayer as stated in the notice; all in pursuance of said section three thousand one hundred eighty-six (3186) of the revised statutes of the United States."

In the case of *United States vs. Maniaci et al,* 36 Fed. Supp. 293, Judge Raymond held this statute valid and that the same required the notice of Federal tax liens to describe the land on which the lien is claimed. The lien in this case was an income tax lien but this Michigan statute applies with equal force to all Federal tax liens. Judge Raymond stated in his opinion, in part, at pages 394, 395, as follows:

"Conclusions of Law

1. Under the provisions of section 3186 of the Revised Statutes of the United States, as amended by act of May 29, 1938, section 613, 45 Stat. 875, 26 U.S.C.A. Int. Rev. Acts, page 461, it is provided that such liens shall not be valid as against any purchaser until notice thereof has been filed by the Collector in accordance with the law of the state in which the property subject to the lien is situated, whenever the state or territory has by law provided for the filing of such notice.

2. By Act No. 104 of the Public Acts of the State of Michigan for the year 1923, as amended by Act No. 13 for the year 1925 (Sec. 3746 of the Compiled Laws of Michigan of 1929), the State of Michigan provided for the filing of notices of federal tax liens in the office of the Register of Deeds, pursuant to Sec. 3186 of the Revised Statutes of the United

States, and thereby provided that the notice of lien should set forth among other things a description of the land upon which a lien is claimed. This statute was in effect at the time of the passage of the Act of May 29, 1928, and is valid.

3. Under the laws of the United States, the Collector of Internal Revenue was required, in order to make the lien valid against defendant Shafer, to include in the notice of lien filed in the office of the Register of Deeds of Kent County, Michigan, a description of the land upon which the lien was claimed.

4. Defendant Shafer purchased said premises in good faith and without notice, at a time when there had been no proper filing of the notice of lien in the office of the Register of Deeds, and the lien for said taxes is therefore not valid as to defendant Wilmarth T. Shafer.

* * * * *

6. An order will be entered dismissing the bill of complaint."

This decision of Judge Raymond was affirmed by the Circuit Court of Appeals for the Sixth Circuit in November of 1940 (116 Fed. (2) 935).

There is no question but that the Federal Government failed to comply with the afore-quoted Michigan Statute in filing its notice of lien in December of 1935 and, therefore, the same is clearly void and of no force or effect and the bill of complaint should, for this reason alone, be dismissed.

II

Real Estate Tax and Assessment Liens Levied by the City of Detroit, County of Wayne and State of Michigan, are First Liens, Prior, Superior and Paramount to Any Other Lien or Encumbrance.

Section 2 of Article X of the Constitution of the State of Michigan provides as follows:

> "The legislature shall provide by law for an annual tax sufficient with other resources to pay the estimated expenses of state government, the interest on any state debt and such deficiency as may occur in the resources." (Appendix, p. 49).

The Constitution of the State of Michigan guarantees to cities the right to levy and collect taxes for the support of government (*Sections 20 and 25 of Article VIII, Appendix, p. 49*).

The Legislature, in the so-called Home Rule Bill, being Act No. 279 of the Public Acts of Michigan of 1909, as amended, made it mandatory for municipalities to provide in their charter for the annual levy of taxes (See *Section* 2230, *Compiled Laws of Michigan*, 1929, *Appendix*, page 50).

The Legislature has also enacted a so-called General State Tax Law. This law is made applicable in cities where it is not inconsistent with the charter provisions. (*Section* 3500, *Compiled Laws of Michigan*, 1929, *Appendix*, p. 51. See: *Detroit Shipbuilding Company v. City of Detroit*, 228 Mich. 145; *State Board of Tax Commissioners v. Board of Assessors*, 124 Mich. 491, 498.

Section 3429 *of the Compiled Laws of Michigan*, 1929 *(General State Tax Law)* as last amended by Act No. 19 *of the Extra Session of* 1934, provides as follows:

"The taxes thus assessed shall become at once a debt due to the township, city, village and county from the persons to whom they are assessed, and the amounts assessed on any interest in real property shall, on the first day of December, for state, county, village or township taxes or upon such day as may be heretofore or hereafter provided by charter of a city, become a lien upon such real property, *and the lien for such amounts, and for all interest and charges thereon, shall continue until payment thereof. And all personal taxes hereafter levied or assessed shall also be a first lien, prior, superior and paramount, on all* personal property of such persons so assessed from and after the first day of December in each year for state, county, village or township taxes or upon such day as may be heretofore or hereafter provided by charter of a city, and so remain until paid, * * * " (Appendix, p. 50).

It is apparent that *Section* 3429, *supra,* makes both real and personal property taxes levied by any unit of government in this State a first lien. The statement in *Section* 3429 *of the Compiled Laws* that "all personal taxes shall also be a first lien" means that all real estate taxes in addition to personal property taxes constitute a first lien upon the lands assessed inasmuch as the word "also" could only refer to taxes levied upon real estate. Taxes levied upon real estate have always, in this State, been first liens upon the property, superior to mortgage and other liens. At an early date the Supreme Court of the State of Michigan established this fundamental rule in the case of *Harrington v. Hilliard,* 27 Mich. 271, the Court saying in its opinion, at pages 275, 276, as follows:

"* * * In other words, the proceedings from the valuation of the land and the imposition of the taxes till their final collection, have been in rem against the land itself, as well as against the owner or person taxed, if the latter were a resident. And no

> express provision making the tax a lien was ever necessary under this system, to make it a lien, so far as the rights of the state or the public were concerned; as this was the necessary effect and direct result of the system itself. Nor was there ever a time in this state when the rights of the public or the state, to enforce a payment from the land itself was in any manner affected by the sale, or any number of sales of the land."

See, also: *Lindsay v. Eastwood*, 72 Mich. 336.

There is no provision in the Charter of the City of Detroit that is inconsistent with the provisions of the general tax law making real estate taxes a first lien. Therefore, in accordance with *Section* 3500 *of the Compiled Laws*, App. p. 51, real estate taxes levied by the City of Detroit constitute a first lien upon the lands assessed. There is no provision in the statute or charter that expressly or by implication would subordinate real estate taxes levied by the City of Detroit to taxes levied by any other unit of government in this State upon the same property.

The *Charter of the City of Detroit* provides in *Section* 1 *of Chapter IV of Title VI*, as follows:

> "All city taxes shall be due and payable on the fifteenth day of July in each year, and on that date shall become a lien on the property taxed." * * *.

Section 27 *of the same Chapter and Title* provides as follows:

> "All city taxes upon personal property and real estate and special assessments thereon in addition to being a lien upon the property assessed shall become a debt against the owner from the time of the listing of the property for assessment, and shall remain a debt against the owner of the property or his estate after his death, until the same are paid."

The Supreme Court of this State recently held that the tax lien of the City of Detroit has been accorded equality of effectiveness with state and county tax liens. In the case of *Hoffman v. Otto, et al*, 277 Mich. 437, the Court, in adjudicating the effect of a state and county tax title upon the tax interest of the City of Detroit in the same property, said in its opinion at pages 439, 440, as follows:

> "In behalf of the city it is contended that there is no superiority among the tax liens of the units of government of the State; that the tax lien of the city of Detroit is, by the Constitution and statutes, accorded equality of effectiveness with the lien for State and county taxes; that the sale of real estate for delinquent taxes by one unit of government is subject to the duly authorized tax lien of another unit of the government within the state, when the tax lien is possessed by the municipal unit, and that plaintiff's title, under the tax deed, did not and could not divest and destroy the tax liens of the city.
>
> Taxation is a power of sovereignty. The power may not be surrendered but, to the extent of public need, may be delegated to municipal power. When, for general municipal purposes, it is so delegated it is clothed with effectiveness and, unless carrying restrictions, serves with the sovereign power and is to be saved from defeat of such purpose if reasonably possible.
>
> The State, undoubtedly, could, by appropriate legislation, do the very thing claimed by plaintiff, but such legislation would have to be plainly expressed and cannot be accomplished by construction or implication.
>
> Our attention is not called to any such plainly expressed legislation."

Taxes upon real estate constitute a lien until paid. *Eaton v. Chesebrough,* 82 Mich. 214.

> "It is and always has been fundamental, in our revenue system, that a lien upon real estate exists for the purpose of collecting taxes levied thereon. Change of ownership does not affect it."
>
> *Jacobs v. Union Trust Company,* 185 Mich. 233, 236.

Taxes upon mortgaged lands in this State are as much a lien upon mortgage interests as upon the equity of redemption. *Horton v. Saunders,* 13 Mich. 409.

Real estate taxes are a lien upon the lands superior to mortgages. *Noeker v. Howry,* 119 Mich. 626.

The lien for taxes upon real estate continues until foreclosed. *Auditor General v. Carpenter,* 138 Mich. 669.

In the scheme for collecting taxes as provided by the Statutes of the State of Michigan and the Charter of the City of Detroit, each assessment constitutes a lien, until paid, upon the real estate assessed, which lien may be enforced by a sale of the property. *Woodmere Cemetery Association v. City of Detroit,* 192 Mich. 553, 559.

Real estate taxes in Michigan constitute an impost levied in support of government, a charge in rem but not in personam. In the case of *Schaefer v. Woodmere Cemetery Association,* 256 Mich. 332, 239 N.W. 300, the Treasurer of the City of Fordson, Michigan, brought suit in assumpsit to recover general city taxes and special paving assessments. The Court said in its opinion, at pp. 332, 333, in part, as follows:

> "We are met by the question of the right of the plaintiff to maintain this suit.
>
> 'The only case provided for by statute wherein suit may be brought for unpaid taxes by the town-

ship is where taxes on personalty have been returned unpaid for want of property on which to levy. 1 Comp. Laws, 1871, sec. 1014. In such case the treasurer may sue in the name of the township. Taxes on real estate may be collected by distress on goods and chattels (1 Comp. Laws 1871, sec. 1003), but if not so collected the tax is returned unpaid and the land sold to make it.' *Staley v. Township of Columbus,* 36 Mich. 38.

This is still the rule. It follows the suit in question will not lie. This question was raised on the argument and it goes to the jurisdiction of the court.''

See also: *Grosse Ile Township v. New York Indemnity Company,* 260 Mich. 643, 245 N.W. 791, 86 A.L.R. 776.

Staley v. Columbus Township, 36 Mich. 38.

It is apparent from the foregoing that in the State of Michigan suit cannot be brought to collect taxes and assessments upon real estate. If the United States Government's assertion in the case at bar of a superior lien is sustained, there is no manner in which payment of the city, county and state taxes and assessments can be secured.

There can be no question but that, by the statutory and common law of the State of Michigan, general tax and assessment liens are first and prior liens in the property.

III

The Estate Tax Lien of the United States Constitutes a General Lien Against the Real Estate of the Deceased but such Lien has not been made by Congress a Lien Prior to Specific and Complete Tax Liens of a State or its Subdivisions, Made First Liens by State Statute.

Section 315 (*a*) provides, in part, as follows:

> "Unless the tax is sooner paid in full, it shall be *a lien for ten years upon the gross estate of the decedent,*" * * *

Title 26, *U.S.C.A., Section* 427, *Appendix. p.* 45.

Section 3186 *of the Revised Statutes* provides, in part, as follows:

> "If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) *shall be a lien in favor of the United States upon all property and rights to property,* whether real or personal, belonging to such person."
>
> "(b) Such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor, until notice thereof has been filed by the collector."

U.S.C.A., Title 26, *Sections* 1560-1567, *Appendix,* pp. 45-47.

Appellant, The Detroit Bank, argues with considerable force and conviction that Section 3186 applies to the lien claimed by the United States. With this conclusion we agree. The language is clear and unambiguous; the section has application to "any person liable to pay any

tax." The question of whether or not the appellee is bound by this section insofar as its claimed estate tax lien is concerned, is of extreme importance to the mortgage interests involved but is not decisive of the question of the priority of the Federal lien over the specific tax liens of these Petitioners levied for general property taxes.

Section 315 (*a*) and *Section* 3186 both provide for a lien upon all of the property of the decedent, resembling, in many respects, a mortgage. Congress has not fastened a lien upon any specific property nor has it declared it to be a first lien superior and paramount to general taxes constituting expressly a first lien upon specific property. Indeed, by *Section* 3186 the lien is made inferior to mortgage, purchaser and judgment liens until the requisite notice has been filed by the Collector. This is the reverse of the statutory provision of the State of Michigan which makes real estate taxes a first lien on the property, prior, superior and paramount to mortgage liens or any other claim or encumbrance. (*Section* 3429, *Compiled Laws of Michigan,* 1929; *Appendix,* pp. 50-51). Congress could readily have declared the lien to be a first lien as it did in the instance of insolvency as provided by *Section* 3466 *of the Revised Statutes.* (*U.S.C.A. Title* 31, *Section* 191, Brief, p. 35.) That Congress did not declare the estate tax lien to be a first lien and expressly make it paramount to specific first liens for the general taxes of a state and its subdivisions, is the determining factor in this case. We are assuming for the purpose of this argument, but not agreeing, that Congress would have the power to enact such legislation. Appellee assumes that the mere granting by Congress of a general lien upon "all property" without designation of priority is sufficient for its purpose. This assumption ignores fundamental and well established legal principles.

The right to priority in payment of taxes or imposts due to the Government is a prerogative of the crown, well established in the common law. Many states and their subdivisions have been held to possess this sovereign power which is not founded upon any personal advantage to the sovereign but upon sound reasons of public policy in order to assure an adequate revenue to support Government and to pay its debts. The claim of the United States cannot stand upon any sovereign prerogative but exists, if at all, wholly and entirely by statute, as the United States has no common law.

The Court said in its opinion in the case of *Equitable Trust Company v. Connecticut Brass and Manufacturing Corporation*, 290 Fed. 712, at page 716, as follows:

> "We think it clear that whatever claim to priority the United States may assert does not rest upon the theory of sovereignty. * * * Whatever the rule may be in the several states, the question whether the United States has a common law of its own is quite a different matter. The Supreme Court has said on numerous occasions that there is no common law of the United States." * * *.

And again at page 718, the Court said:

> "As the United States has no common law, whatever right of priority in the payment of debts the United States possesses over other creditors exists because of some statute which confers it. It does not exist independently of statute." * * *.

In the case of *Wheaton v. Peters*, 8 L. Ed. 1055 (1834), the Court said in its opinion, at page 1080, as follows:

> "It is clear there can be no common law of the United States. The federal government is composed of twenty-four sovereign and independent states, each of which may have its local usages, customs

and common law. There is no principle which pervades the union and has the authority of law that is not embodied in the constitution or laws of the union. The common law could be made a part of our federal system only by legislative adoption."

See, also: *Smith v. Alabama*, 124 U. S. 465, 31 L. Ed. 508.

The General Rule is that Tax Liens have only Priority Expressly Accorded them by Statute.

The general rule is stated in 61 *C. J., p.* 926, *Section* 1178, as follows:

"Whether or not the legislature has made the lien of taxes paramount must depend upon the construction of the particular statute; and the question of priority is one of legislative intent. Where the language of the statute is not positive; and its intent is not plain, it cannot be held to create a lien for taxes superior to antecedent incumbrances; but, although a mere declaration that taxes shall be a lien does not itself show an intention that it shall occupy the paramount position, it is sufficient if the purpose of the legislature to make the tax lien paramount to all prior rights is clearly manifested, as where the statute provides that taxes shall remain a lien until they are paid in full."

In the case of *In re*: *Wyley Company*, 292 Fed. 900, the Court in its opinion, at pages 901-902, said as follows:

"Taxes due the United States for bankruptcies are alike wholly subject to the power of Congress. Congress may make such provisions for the payment of one through the other as it sees fit. A tax has such lien and priority and only such as is given it by statute. 37 Cyc. 1138, 1143. The common law preference of the sovereign is said not to exist in favor of the United States, save as conditioned by statutes.

> *United States v. Bank of North Carolina,* 6 Pet. 29, 8 L. Ed. 308. *A lien is provided for federal taxes by Revised Statutes (Comp. Stat. Sec. 5908) but no special priority is stated.* Debts due the United States are given a first priority, apparently extending to cases of bankruptcy by Revised Statutes, Section 3466 (Comp. Stat. Sec. 6372); but taxes are hardly to be considered debts (*New Jersey v. Anderson,* 203 U. S. 483, 492, 27 S. C. 137, 51 L. Ed. 284). * * * It is not competition here between any but tax liens. Considering the dual nature of our government, and that neither the Union nor the states may destroy or hinder the other in their several functions, and all have an equal need of their revenues, it is concluded that the intent of congress was that there should be a pro rata payment upon all the taxes named in section 64 (a), when the available fund is not sufficient to pay in full, the taxes due the United States having no priority over the others."

This has been the uniform interpretation of Section 64 (a) (U. S. C. A., Title 11 Section 104, Appendix, pp. 47-48) of the *Bankruptcy Act.* See the following:

> Re: *A. J. Waterman Manufacturing Company,* 291 Fed. 589;
>
> Re: *A. E. Fountain,* 295 Fed. 873;
>
> *New Jersey v. Anderson,* 203 U. S. 483, 51 L. Ed. 284, 27 S. C. 137;
>
> *United States Fidelity and Guaranty Co. v. Sweeney,* 80 Fed. (2) 235;
>
> *State of Missouri v. Ross,* 80 Fed. (2) 329;
>
> Certiorari granted, 297 U. S. 702, 80 L. Ed. 991, 56 S. C. 669. Affirmed 299 U. S. 72, 81 L. Ed. 46, 57 S. C. 60.

The rule concerning the priority of taxes is stated in the case of In re: *Cutler and Horgen,* 234 N. W. 238, modi-

fied and rehearing denied 238 N. W. 80, 213 Ia. 983, at page 81 of the Northwestern Reporter, as follows:

> "Section 7205, Code 1927, makes such taxes a lien but does not give them priority. There can be no question that the legislature had the right to make taxes a paramount lien by so declaring by statute, but in the absence of such declaration, taxes declared to be a lien, are not a first lien. *Bibbins v. Clark,* 90 Ia. 230, 57 N. W. 884, 59 N. W. 390, 29 L. R. A. 278. The general subject is discussed and authorities collated in 37 Cyc. 1143, et seq."

The question of tax liens and their priority is for legislative determination.

> *People v. City and County of Denver,* 85 Col. 61, 273 Pac. 883;
>
> *Elsner v. United American Utilities,* 180 Atl. 589 (Del. Ch).

Statutes will not be construed to make tax liens superior to prior mortgage liens, unless the legislative intent is clearly expressed.

> *Eagle Point Irrigation District v. Cowden,* 137 Ore. 121, 1 Pac. (2) 605;
>
> *Home Owners Loan Corporation v. Mitchell,* 81 Pac. (2) 268 (Wash.).

A state has undoubted power to create a priority of lien in aid of its tax power but such priority will not be indulged in unless sustained by some positive statute and will not be sustained by resort to construction.

> *Scandinavian American Bank v. King Company,* 92 Wash. 650, 159 Pac. 786.

In the case of *Walker v. Nogales Building and Loan Association,* 28 Ariz. 484, 237 Pac. 1094, the rule is stated in the opinion at page 1096 of the Pac. Rep., as follows:

> " 'It is competent' however, according to 31 Cyc. 1143, 'for the legislature to make taxes a paramount lien on the property of the taxpayer, and this has been done in many states; the consequence being that the lien for taxes takes precedence over every other lien or claim upon the property of whatsoever kind, however created, and whether attaching before or after the assessment of taxes. But this preference does not belong to the tax lien unless it is so declared by statute, *and a law, for example, which merely enacts that taxes shall be a lien on real property, does not make them a first lien.*' See 26 *R. C. L.* 389; 27 *Am. & Eng. Enc. of Law* (2 Ed.) 741; 37 *Cyc.* 1145; *Miller v. Anderson,* 1 S. Dak. 539, 47 N. W. 957, 11 L. R. A. 317. *Cooley on Taxation,* 444."

There are several recent cases directly adjudicating the tax question involved in the case at bar. All of these cases involve an interpretation of *Section* 3186 *of the Revised Statutes.* Counsel for the Appellee take the position that this statute does not apply. We do not agree with this conclusion, as previously stated, but the cases are clearly analogous regardless of the application of that section of the Statute because the nature of the lien imposed by *Section* 315 (*a*) and *Section* 3186 is practically identical. If anything, the position of the United States with relation to its priority over other encumbrances is somewhat stronger under *Section* 3186 than it is under *Section* 315 (*a*). *Section* 315 (*a*) merely provides that the tax "shall be a lien for ten years upon the gross estate of the decedent" without any designation of its priority or superiority whatever. *Sub-section* (*b*) *of Section* 3186 provides thta the lien imposed when "any person" neglects or refuses to pay "any tax" is valid against a mortgagee,

purchaser or judgment creditor after notice thereof has been filed by the collector. (Appendix, p. 44).

There is no expression that such lien is at any time valid against or superior to the specific first lien for general taxes imposed by a state or its subdivisions. In interpreting the intent of Congress in these two sections of the statute, is it significant to compare them with the provisions of *Section* 3466 (Brief p. 33) *of the Revised Statutes,* as previously pointed out, where in cases of insolvency "the debts due to the United States shall be *first* satisfied." If Congress had intended that the estate tax lien was to be a superior lien or was to be "first" satisfied, it could readily have so provided.

In the case of *Winston-Salem v. Powell Paving Company of North Carolina,* 7 Fed. Supp. 424, 1934), the District Court in proceedings for the sale of real estate to satisfy street assessments, taxes due the City, state and federal government had to determine the order of priority in the distribution of the proceeds of the sale. The liens involved were the following: Special assessment liens of the city for the years 1924 and 1925; general tax liens, 1929 to 1933, inclusive; county tax liens for 1930 to 1933, inclusive; state income tax liens for 1928 and 1929; and United States income tax liens for 1926-1927, 1928-1929. The tax lien of the United States was held to be covered by Section 3186 of the Revised Statutes. The Court said in its opinion at page 427, as follows:

> "There is no state annual ad valorem tax involved in this suit. The state taxes which are involved are state income taxes. Therefore, the general taxes of the city and county, from 1929 to 1932, inclusive, are entitled to priority over all other liens, and the street assessments for 1924 and 1925 have priority over any of the other liens, except the general taxes. The state and federal tax liens attach in the order of

their priority as set forth in the stipulated facts, to-wit: State income tax for 1928 attached March 15, 1929; for 1929, March 15, 1930; the income tax due the United States 1926-1927, attached April 29, 1930; for 1928-1929, on May 27, 1930. Both the state and federal statutes fail to make income tax liens prior to other tax liens. They become general liens against all real estate of the taxpayer according to the terms and limitations of the statutes, but the language used does not warrant the inference that the Legislature or Congress intended to make such a lien prior to general tax liens.

The federal government contends that taxes due it have priority over a claim for taxes due the state, county, or city, relying, in part, on the authority of *New York v. Maclay,* 288 U. S. 290, 53 S. Ct. 323, 77 L. Ed. 754; *Spokane County v. United States,* 279 U. S. 80, 49 S. Ct. 321, 73 L. Ed. 621. These decisions came clearly within the provisions of 31 U.S.C.A. Sec. 191, Rev. St. sec. 3466. It confers priority to debts due the United States by one who is insolvent or where the debtor makes an assignment. The decisions were based on the statute above mentioned. Since the facts in the instant case do not bring it within the provisions of this statute, the above authorities are inapplicable here.

Insolvency within the meaning of section 3466 must exist before this statute applies. *United States v. Oklahoma,* 261 U. S. 253, 43 S. Ct. 295, 297, 67 L. Ed. 638. In this case it is stated: 'The claim of the United States to the asserted priority rests exclusively upon the statute. No lien is created by it. * * * It establishes priority which is limited to the particular state of things specified.' *United States v. Oklahoma, Supra, Beaston v. Farmers' Bank,* 12 Pet. 102, 132, 9 L. Ed. 1017.

The priority is not an attribute of sovereignty, but depends on the acts of Congress. *United States v. Bank of North Carolina,* 6 Pet. 29, 30, 8 L. Ed. 308; *United States v. Middle States Oil Corp.* (C.C.A. Okl.) 18 F. (2d) 231, 57 A. L. R. 848.

The lien established by section 3186 is a general lien upon all property of the taxpayer, and resembles, in many respects, a mortgage. While it is a lien, it is not necessarily to be preferred over any other lien. The government had not fastened a lien on any specific property; nor does it appear that there is no other property out of which the tax can be paid. If the government had sold the property for taxes in 1930, the date of its lien, the state tax which attached first, the county and municipal tax 1929, and street assessments, and the judgment would have been paid before the federal tax, or the property would have been sold subject to them. The land would have been taxed for general taxes in favor of the city and county, for 1930 and 1931 and 1932. Are these local groups to be deprived of the tax thus subsequently accruing if the government did not sell the property in 1930? It does not appear reasonable that Congress intended such a result. Since the lien is general and not specific, and expressly exempts the lien 'as against any mortgagee, purchaser, judgment creditor until notice has been filed by the collector,' it would appear that the lien, from the time of notice, operates as a mortgage or judgment lien, subject to enforcement by the government if it elects to enforce it. Congress could have provided here, as it did in section 3466, that the lien is to be paid first, but it does not do so.

Having made the provision in the one and refrained from it in the other, the inference is that no such priority was intended.

The property in this suit should be sold and the proceeds applied in accordance with the rights of the claimants when the proceeding was instituted, for neither party could act after that, except on the orders of the court. Applying this rule, the proceeds will be applied: First, to the annual general taxes of the city and county for the years 1929 to 1932, inclusive; second, the street assessments; third, the judgment; fourth, the state taxes; fifth, the government taxes."

The case of *Berrymount Land Company v. Davis Creek Land and Coal Company*, 192 S. E. 577, decided by the Supreme Court of Appeals of the State of West Virginia (1937) followed the *Winston-Salem case, supra,* and arrived at the same conclusion. The question in controversy was the proper disposition of a fund in the possession of the Court that had been realized from the sale of real estate. The fund was claimed by the United States government and the State of West Virginia under tax liens asserted by each of them — the lien of the United States was claimed by virtue of an unpaid income tax lien and that of the State for real estate taxes extending over a period of several years. Title to the land in question had vested in the State because of the delinquent taxes. In the case at bar the property has been bid in by the State for State and County taxes and by the City of Detroit by reason of the municipal tax delinquency. The Court, in this case, said in its opinion, at page 579 of the S. E. Rep. as follows:

> "Furthermore, the right of the state to collect property taxes on its domain for its own support, and that of its governmental subdivisions, seems inherently necessary for its preservation. If the Federal government may assert its power over the State's domain, to the extent of enforcing a lien for taxes to the exclusion of the state's power of taxation thereon, then the integrity of the state government is seriously affected, for, as has been held, 'the power to tax is the power to destroy.'"
>
> * * *

And at page 580:

> "It is difficult to believe that the Congress, in enacting Section 3186, which by its terms protects the rights of purchasers and lienors prior to the filing of liens by the collector, thereby evincing its intent to make such liens subject to equitable rule,

had any thought of asserting the same to the prejudice of the states and their local subdivisions, in the collection of taxes vitally necessary to their continued maintenance."

In the case of *United States v. Woodside,* 34 Fed. Supp. 281, certain real estate was sold and the proceeds of the sale paid in to the Clerk of the Court until the order of priority of the general city, county and state tax liens and the income tax lien of the United States had been determined. The income tax lien of the Federal Government became effective May 20, 1930. The lien for City, State and County taxes, together with some special assessments for paving owing to the City of Greenville, S. C., carried through the year 1939. The Federal Government in this case, as in the case at bar, relied to a large extent upon the cases of the *People of the State of New York v. Maclay,* 288 U. S. 290, and *Spokane County v. United States,* 279 U. S. 80. The District Court in its opinion in this case followed the decision in the case of *City of Winston-Salem v. Powell Paving Company,* 7 Fed. Supp. 424, supra, stating its conclusion, in part, as follows (page 283):

"The Government relies largely on the cases of the *People of the State of New York v. Maclay,* 288 U. S. 290, 53 S. Ct. 323, 77 L. Ed. 754; *Exchange National Bank of Spokane v United States,* 147 Wash. 176, 265 P. 722, 62 A. L. R. 139; *Spokane County v. United States,* 279 U. S. 80, 49 S. Ct. 321, 73 L. Ed. 621. These cases are distinguishable from the case at bar, but it is noteworthy that they involve the distribution of the creditors' assets, and only personal properties were involved in the Spokane County cases, and the taxes levied were in personam and not in rem; and further, they recognize the preference of perfected or specific liens even in the distribution of an insolvent's property by a receivership. Here, we have no legal or administrative distribution of the debtors' entire assets, either as a bankrupt, insolvent or otherwise."

The Court found that the income tax lien of the United States was a general lien, having no priority over other tax liens, whereas the City, State and County general tax liens were expressely made first liens. The Government in this case made no effort to enforce its income tax lien for a period of approximately 10 years. It is significant to note that in the case at bar the foreclosure proceedings were instituted just one day prior to the expiration of the period of 10 years from the time the alleged estate lien attached to the property. The Court in this *Woodside case* concluded its opinion as follows (p. 284):

> "The regularity or legality of the liens for paving assessments due the City of Greenville, or the taxes due to it and the county, is not questioned, and it is not disputed that the properties are properly listed with the auditor and duly assessed for taxation. The unpaid taxes on the properties involved arose and were subsequent to May 20, 1930, but said assessments in all instances, except one or two of minor importance, were made against these properties while in the possession of other owners to whom the tax debtors had conveyed the same. For some reason the Government for many years made no effort to enforce its income tax lien against these properties, and in the meantime some of the properties were specifically assessed for paving improvements, and taxes were assessed in favor of the county and the city against said properties, and it would be inequitable in the circumstances to deny to these political units the right to collect their taxes in the face of the Government's unexplained long delay, and in the face of the fact that the paving assessments were legally made against some of the properties which became specific liens. The paving assessments against two of the John T. Woodside lots in the City of Greenville were assessed in 1939, and the paving assessments as against the Robert I. Woodside properties were assessed in 1929, prior to the

origin of the Government's general lien for unpaid income taxes.

The paving assessments due and payable to the City of Greenville were authorized by Article X, Section 14 of the 1895, S. C. Constitution, as amended, and given active force by the provisions of the Enabling Acts of the State Legislature and the Ordinances of the City of Greenville, S. C. Such paving assessments are recognized as a form of tax given rank superior to that of mortgages by a holding of the S. C. Supreme Court in the case of *Beatty v. Wittekamp,* 171 S. C. 326, 172 S. E. 122.

After most careful consideration of the questions involved in this matter, the court concludes that the state and county taxes due and payable to Greenville County should first be paid out of the proceeds of sale in each case, which proceeds are in the hands of the officials of this court; that there should next be paid from such proceeds in each case the paving assessments and taxes due and owing to the City of Greenville, S. C., and that the remaining funds in each case should be applied toward the payment of the income tax liens of the United States of America."

The *Woodside case* was reversed by the Fourth Circuit Court of Appeals in *United States vs. City of Greenville,* 118 Fed. (2d) 963. The Greenville opinion questioned the decisions in the *Winston-Salem* and *Berrymont cases.* We submit, however, that the reasoning in the two latter cases presents a closer and deeper study of the problem and should be sustained. We submit, further, that the Greenville case is not on all fours with the case at bar in that it does not appear that South Carolina had enacted the necessary legislation under Title 26, Sec. 1562, U. S. C., as had Michigan (Sec. 3746, Compiled Laws Michigan, 1929; Appendix, page 51). Therefore there was a valid lien in the Greenville case — none in the case at bar because of the Government's failure to comply with the Michigan statute.

These cases are the only adjudications that we have been able to find involving the question herein presented, are extremely well reasoned, and do, we believe, result in a sound and logical conclusion. We have been unable to find any adjudications to the contrary, except the *Greenville* decision supra, and the courts have consistently held the opposite to the decision of the District Court and Circuit Court of Appeals here.

In the case of *In re Howell and King Co.*, 16 Fed. Supp. 984, the District Court held that State, county and local taxes, which were made first liens by the State laws, were required to be paid first from funds of the bankrupt estate, but the tax due to the United States would not be paid as a lien claim where notice of the lien had not been filed. The Court in this case also followed the decision in the case of *Winston-Salem v. Powell Paving Company*, 7 Fed. Supp. 424, *supra*.

In the case of *City of Walla Walla v. State*, 85 Pac. (2) 676, 119 A. L. R. 1327, the Supreme Court of the State of Washington held that an inheritance tax lien was subordinate to general ad valorem tax liens upon real estate, the Court saying in its opinion, at page 678 of the Pac. Rep. in part as follows:

> "The general ad valorem tax upon real property lies at the foundation of the tax structure of the state, and its paramount lien is, in concept, well nigh tradition. Such tax is imposed directly upon property and exacted from all owners thereof. It is levied annually, at a regular time, and operates uniformly according to fixed general rules. In reliance upon the comparative certainty of its collection, public officials administer the affairs of state. That this tax be promptly and fully collected is of supreme and vital importance to the people of the commonwealth.

The inheritance tax, on the other hand, is not a property tax, but a special tax imposed upon the individual for the enjoyment of the privilege of receiving property on the death of the owner. It did not become a part of our tax system until 1901. Laws of 1901, chapter 55, page 67. Such tax does not operate uniformly, and the total annual revenue therefrom cannot be predicted with any degree of certainty. Although it is a valuable auxiliary to the general tax, there is no gauge by which its ultimate contribution can be measured. It is not a sure foundation upon which the inexorable and recurring demands of safe government and public need can rest.

There can be no doubt that the legislature has always, in enacting the various tax statutes, had these differences in mind. It must also have had in mind the difference between merely establishing a lien for a tax and fixing priority between various tax liens. To insure the collection of the inheritance tax, the legislature has provided that such tax 'shall be and remain a lien on such estate from the death of the decedent until paid.' Laws of 1901, Chapter 55, Section 1, page 67; Rem. Rev. Stat. Section 11201. But, on the subject of priority liens, it has said, since 1891, with reference to general taxes on real property, that the lien for such taxes 'shall have priority to and shall be fully paid and satisfied before any * * * deed, obligation or liability to or with which said real property may become charged or liable.' "

Congress Is Not Empowered to Enact Legislation That Would Make United States Tax Liens Superior to Specific and Complete Tax Liens of the States and Their Subdivisions.

Ad valorem taxation of real and personal property is the principal source of revenue for the support of state and local units of government. This source of revenue is the tax base, the very foundation of these many units of government. Does Congress possess the power to invade this source in enforcing the payment of its taxes by asserting a priority resulting in the destruction of the tax interest of the states and their political subdivisions? Since Justice Marshall's early declaration that "the power to tax is the power to destroy," this principle has been in force in this country. Have the people by the Constitution vested in Congress the power to destroy the states? To ask the question is to answer it. The seriousness of this problem becomes apparent when consideration is given to the ever increasing Federal taxes at the present time and the obviously necessary additional expansion of this field in the future to retire the rapidly increasing Federal debt.

The draftsmen of the Constitution created a federated republic composed originally of thirteen sovereign states. The states delegated to the national government certain powers, reserving all other powers to themselves or to the people. It was never intended to make the states completely subordinate to the United States. The states reserved to themselves all the attributes of sovereignty which they did not delegate to the Federal Government. On the contrary the United States was not intended to be subordinate to the States and from the time of the famous case of *McCulloch vs. Maryland*, 4 Wheat. 316, 4 L. Ed. 479, to the present time this system of dual sovereignty has been recognized by the courts.

The states have never been subject to the taxing jurisdiction of Congress. They are independent sovereignties. In the case of *Ohio Life Insurance and Trust Company v. DeBolt,* 16 How. 230, the Supreme Court of the United States said:

> "It will be admitted on all hands that with the exception of the power surrendered by the constitution of the United States, the people of the several states are absolutely and unconditionally sovereign within their respective territories."

Have the states surrendered to the Federal Government the power to deprive the states of the foundation of their source of revenue? We think not. The Supreme Court anticipated this problem when they were concerned with the priority accorded by Congress in Section 3466 of the Revised Statutes (Brief, p. 35).

In the cases of *Spokane County, et al. v. United States,* 279 U. S. 80, 73 L. Ed. 621; and *People of the State of New York v. Maclay,* 77 L. Ed. 754, 53 S Ct. 326, 288 U. S. 290, relied upon by respondent, the Supreme Court expressly reserved decision upon the question of priority of a United States tax claim over a specific and completed tax lien of a State or its political subdivisions. These cases will be discussed in detail subsequently in this brief.

In the case of *Lane County v. Oregon,* 74 U. S. 71, 19 L. Ed. 101, the Supreme Court in its opinion, at page 104 of the L. Ed. Rep., said:

> "The people of the United States constitute one nation, under one government, and this government, within the scope of the powers with which it is invested, is supreme. On the other hand, the people of each state compose a state, having its own government, and endowed with all the functions essential to separate and independent existence. The States disunited might continue to exist. Without

the States in union there could be no such political body as the United States.

Both the States and the United States existed before the Constitution. The people, through that instrument, established a more perfect union by substituting a National Government, acting, with ample power, directly upon the citizens, instead of the Confederate Government, which acted with powers, greatly restricted, only upon the States. But in many articles of the Constitution the necessary existence of the States and, within their proper spheres, the independent authority of the States, is distinctly recognized. To them nearly the whole charge of interior regulation is committed or left; to them and to the people all powers not expressly delegated to the National Government are reserved. The general condition was well expressed by Mr. Madison in the Federalist, thus: 'The Federal and State Governments are, in fact, but different agents and trustees of the people, constituted with different powers and designated for different purposes.'

Now, to the existence of the States, themselves, necessary to the existence of the United States, the power of taxation is indispensable. It is an essential function of government." * * * *"In respect, however, to property, business and persons within their respective limits, their (the states) power of taxation remained and remains entire."* * *

IV.

Section 3466 of the Revised Statutes Does Not Apply.

This section of the *Revised Statutes*, being *U.S.C.A. Title* 31, *Section* 191, provides as follows:

> "Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having a sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed (R. S. Section 3466)."

This section has been strictly construed and applies only in those specific cases of insolvency outlined in the statute. None of the conditions necessary to make this section applicable exist in this case.

We do not understand that the respondent contends that Section 3466 is effective here but because it has relied almost entirely upon cases based upon this statute, we feel that this discussion is necessary.

The history of this section of the statute and its application is discussed in detail in the case of *Price v. United States*, 269 U. S. 492, 70 L. Ed. 373. In the case of *United States v. Oklahoma*, 261 U. S. 253, 46 S. Ct. 295, 67 L. Ed. 638, the Court was concerned with an interpretation of Section 3466, saying in its opinion, at page 643, with reference to this section, as follows:

"It has been considered in a number of cases in this court. The claim of the United States to the asserted priority rests exclusively upon the statute. No lien is created by it. It does not overreach or supersede any bona fide transfer of property in the ordinary course of business. It establishes priority which is limited to the particular state of things specified. The meaning of the word 'insolvent,' used in the act, and of the insolvency therein referred to, is limited by the language to cases where 'a debtor not having sufficient property to pay all his debts shall make a voluntary assignment,' etc. Mere inability of the debtor to pay all his debts in ordinary course of business is not insolvency within the meaning of the act, but it must be manifested in one of the modes pointed out in the latter part of the statute, which defines or explains the meaning of insolvency referred to in the earlier part. *United States v. State Bank,* 6 Pet. 29, 35, 8 L. Ed. 308, 310; *United States v. Fisher,* 2 Cranch, 358, 390, 2 L. Ed. 304, 314; *United States v. Hooe,* 3 Cranch, 73, 90, 2 L. Ed. 370, 375; *Prince v. Bartlett,* 8 Cranch, 431, 433, 3 L. Ed. 614, 615; *Conrad v. Atlantic Ins. Co.,* 1 Pet. 386, 439, 7 L. Ed. 189, 212; *Brent v. Bank of Washington,* 10 Pet. 596, 611, 9 L. Ed. 547, 553; *Field v. United States,* 9 Pet. 182, 201, 9 L. Ed. 94, 101."

See: *Liberty Mutual Insurance Company v. Johnson Ship Yards,* 6 Fed. (2) 752.

Respondent's counsel have cited in support of its position in this case, the case of *Spokane County, et al, v. United* States, 279 U. S. 80, 73 L. Ed. 621. This case involved the order of distribution of the funds of an insolvent as between the claim for county taxes and taxes levied by the United States. The tax laws of the State of Washington apparently provided that the county taxes involved were taxes in personam, that the tax constituted an obligation of the person owning the property at the time of the assessment. It further appeared that in accordance with

the statutes of the state the lien was not complete as there was nothing in the record to show that distraint by the sheriff or any of the necessary procedure required had been followed. The Supreme Court said in its opinion, at page 625, as follows:

> "From the judgment of the majority of the Supreme Court of Washington in this case, we must infer that the lien of the two counties for the taxes levied before the receiver was appointed and not collected were not specific. This is really a state question. It is explained by the concurring opinion of Judge Parker, as follows:
>
> 'I concur in the result reached in the foregoing majority opinion solely upon the ground that this tax debt due to the United States, viewed apart from any supporting lien right, has priority over this tax debt due the State of Washington, viewed apart from any supporting lien right. It seems clear to me that each of these two tax debts primarily came into existence by the levy of a tax in personam, and not by the levy of a tax in rem. I think a critical reading of the revenue legislation of the respective sovereignties, the United States and the state, and the record in this case showing the manner of the levying of these respective taxes, will render this plain. The revenue legislation of each has prescribed procedure by which its personam tax debts may be made specific liens upon property of one personally owing such tax debt. This record, I think, warrants the conclusion that neither the United States, the state of Washington nor Spokane County for the State of Washington has ever, by the prescribed statutory procedure, perfected its inchoate tax lien right against any of the property of which the funds here in question are the proceeds. I therefore view these respective tax debts wholly apart from any supporting lien right. Thus, I think the question of which shall be 'first satisfied' out of these funds is determinable by the language of Sec. 466 . . . . quoted in the majority opinion, and hence must be determinable in favor of the United States.'

> "Whatever might have been *the effect of more completed procedure in the perfecting of the liens under the laws of the state, upon the priority of the United States herein, the attitude of the state court relieves us of consideration of it.*"

This case is authority for the following:

1st. That debts due to a state which are not founded upon a specific lien must be subordinated to debts due the United States.

2nd. The question of whether or not a tax lien of a state or one of its political subdivisions is perfected or specific is a state question.

3rd. The Supreme Court of the State of Washington has determined that the personal taxes involved were taxes in personam, not in rem, and that the lien for such taxes was not specific or complete until seizure.

4th. The question was expressly reserved as to whether or not a different conclusion would have been reached if the lien of the county had been specific and complete.

This case is obviously not in point for the reason that it involves a proceeding under *Section* 3466 *of the Revised Statutes,* but it is interesting to note that the Supreme Court has, under that statute, made debts due the United Sates "first" claims. The Court reserved decision on the question of priority between the tax claim of the United States and a specific and complete tax lien of a state. There can be no question but that the tax claims of the City of Detroit and the State and County involved in the case at bar are complete and specific and have, in addition, been expressly made first liens.

The other and more recent case cited in support of the position of the United States in this matter is the case of *People of the State of New York v. Maclay,* 77 L. Ed. 754, 53 S. C. 326, 288 U. S. 290. In this case the question involved was between the United States and the State of New York as to the priority of payment from the assets of an insolvent corporation. The claim of the State of New York was for franchise taxes for the years 1921 to 1925, but such taxes were not assessed or liquidated nor the amount determined until after the receivership. The Court, in its opinion, in discussing the nature of the lien, said, at page 756 of the L. Ed. Rep. the following:

> "Liens in a sense they unquestionably are, but, we think, not so perfected or specific as to change the rule of distribution. The receivers were appointed, as we have seen, in January, 1927; and the petitioner, if not preferred at the time of the appointment, did not win itself a preference by anything done thereafter. *United States v. Oklahoma,* 261 U. S. 253, 260, 67 L. Ed. 638, 644, 43 S. Ct. 295. By the statutes of New York, 'every such tax or fee (including the annual franchise tax to be paid by corporations) shall be a lien and binding upon the real and personal property of the corporation . . . liable to pay the same until the same is paid in full.' New York Tax Law, Consolidated Laws, Chapter 60, Section 197. The lien thus created is effective for any purpose though its amount is undetermined."
>
> * * *
>
> "The problem here is different. To hold that a lien has progressed to such a point as to be a warning to mortgagees and purchaser of a contingent liability, like a notice of lis pendens, is far from holdthat while the liability is unliquidated and unknown, the lien thus created is perfect and specific. By the terms of hypothesis it is nothing of the kind. If the state were to stand upon the warning and omit to ascertain the debt, it would never be able to sell any-

> thing for it would not know how much to sell. Against mortgagees and purchasers a lien perfected afterwards may take effect by relationship as of the date of the inchoate lien through which mortgagees and purchasers became chargeable with notice. The doctrine of relationship will not divest the United States of the preference that accrued when receivers were appointed."

The Court then proceeded to discuss the question of judgment, mortgage and other liens and concluded at page 757 of the L. Ed. Rep. as follows:

> * * * "*Into these refinements and their consequences, there is no need to enter now. Enough for the present purposes that the statutory preference must prevail against the lien of a tax not presently enforcible but serving merely as a caveat of a more perfect lien to come.*"

The same comment can be made concerning this decision. It involves *Section* 3466 *of the Revised Statutes* and expressly reserves decision on the question of priority where a specific state lien is involved.

Respondent has cited the case of *Stover v. Scotch Hills Coal Company,* 4 Fed. (2) 748. This case also involves *Section* 3466 *of the Revised Statutes,* and, is, therefore, not helpful. The case concerns the priority of a United States corporate tax and capital stock and workmen's compensation fund assessment of the State of Pennsylvania, in a brief and poorly considered opinion. The reported decision does not disclose the nature of the lien imposed by the State of Pennsylvania which is presumably not specific or complete or else some consideration would have been given to the question.

The case of *Blumberg v. Federal Steel Corporation,* 16 A.F.T.R. 994 cited in support of the claim of the United

States is a decision of the Circuit Court of Wayne County, Michigan, involving *Section* 3466 *of the Revised Statutes.*

Respondent's case of *North River Coal and Wharf Company v. McWilliams Bros.*, 59 Fed. (2) 979 is the C.C.A. decision in the case of *New York v. Maclay, supra,* previously discussed. The comment of the Court on the question of the nature of the New York lien is of interest here:

> "Since the decision in *Spokane County, Washington, v. United States,* there can be no doubt that the United States should be awarded priority here, unless the taxes due the State of New York can be regarded as supported by a sufficient lien to give them preference over claims of the United States in spite of Revised Statutes, Section 3466 (31 U.SC.A. Section 191)."

The Respondent has blithely hurdled the question of the nature of the tax lien of the State, county and municipality involved in the case at bar by omitting discussion. This procedure follows the well established practice of stressing the facts and law when both support your contention, and neither when you find yourself vulnerable in both directions. This failure to argue the question is not surprising when we find that all of the adjudications involving Section 3466, giving the United States a first claim, reserve decision on the question, and the only pertinent decisions concerning the general lien of the United States support the priority of the local tax and assessment liens. *Sections* 315 *(a) and* 3186, *supra,* as previously stated, give the United States nothing but a general lien without designation of priority, whereas the tax liens of the local units of government are unquestionably specific, complete and prior.

Respondent also has referred to the case of *Portneuf-Marsh Company v. Brown,* 274 U. S. 630. This case did

not involve the priority of a United States tax lien but involved priority under the state law of irrigation projects governed by an act of Congress. Furthermore, the Court did not decide that, in the absence of express statute, priority of liens should be determined entirely by priority in time. The Court held that the question of priority was to be decided not by priority of time merely, but by examination of the entire plan for establishing the irrigation system, in the light of applicable statutes.

On the same point, the Respondent has cited the case of *Sloat v. Finance Corporation*, 219 Mich. 577. The question involved in this case was whether a garage-keeper's lien was superior to the prior recorded chattel mortgage lien in the absence of express statute controlling. This case did not involve tax liens and is not helpful. The priority of state, county and municipal tax liens in Michigan is well established by the Constitution, statutes and Charter provisions as previously discussed in this brief.

(NOTE: The italicizing throughout this Brief is ours.)

CONCLUSION

The tax and assessment liens of the City of Detroit, County of Wayne and State of Michigan, are by Michigan law, complete, specific and superior to any other claim or encumbrance upon the property. The estate tax lien of the United States is a general lien which has not nor could it be accorded by Congress, a priority over specific tax liens of a state and its subdivisions. The rule as enunciated by the Supreme Court of the United States in 1828 in the case of *Conard v. Atlantic Insurance Company of New York*, 1 Pet. 386, 7 L. Ed. 189, is still the law:

> * * * "But it has never yet been decided by this court that the priority of the United States will divest a specific lien attached to a thing, whether it be accompanied by possession or not." * * *

It is therefore, respectfully submitted that the Court should enter a decree ordering and determining:

1. That the notice of the estate tax lien of the United States Government did not contain a description of the properties sought to be reached and, therefore, did not comply with the statutes of the State of Michigan thereby making invalid the alleged Federal tax lien as against the specific and complete tax and assessment liens of the City of Detroit, County of Wayne and State of Michigan.

2. That the tax and assessment liens of the City of Detroit, the County of Wayne and State of Michigan are first liens in the property.

3. That in the event that the real estate described in the bill of complaint is ordered sold, that the proceeds be first

applied to the satisfaction of such tax and assessment liens, including interest and penalty to date of payment.

Respectfully submitted,

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APPENDIX

STATUTES, ETC.

FEDERAL STATUTES

Sec. 315 (*a*) *U.S.C.A. Title* 26, *Sec.* 427:

(a) UPON GROSS ESTATE. Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate, releasing any or all property of such estate from the lien herein imposed. (Feb. 26, 1926, c. 27, § 315 (a), 44 Stat. 80; May 29, 1928, c. 852, § 613 (b), 45 Stat. 876; June 6, 1932, c. 209, § 809, 47 Stat. 283.)

Sec. 3186 *R. S., U.S.C.A., Title* 26, *Sec.* 1560-1567:

Sec. 1560. If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person. (R. S. § 3186; May 29, 1928, c. 852, § 613, 45 Stat. 875.)

Sec. 1561. Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time. (R. S. § 3186, May 29, 1928, c. 852, § 613, 45 Stat. 875.)

Sec. 1562. Such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

(a) In accordance with the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law provided for the filing of such notice; or

(b) In the office of the Clerk of the United States District Court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law provided for the filing of such notice; or

(c) In the office of the Clerk of the Supreme Court of the District of Columbia, if the property subject to the lien is situated in the District of Columbia. (R. S. § 3186; May 29, 1928, c. 852, § 613, 45 Stat. 875.)

Sec. 1563. Subject to such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax, may issue a certificate of release of the lien if—

(a) The collector finds that the liability for the amount assessed, together with all interest in respect thereof, has been satisfied or has become unenforceable;

(b) There is furnished to the collector and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified in the regulations. (R. S. § 3186; May 29, 1928, c. 852 § 613, 45 Stat. 876.)

Sec. 1564. (a) Subject to such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax may issue a certificate of partial discharge of any part of the property subject to the lien if the collector finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the liability remaining unsatisfied in respect of

such tax and the amount of all prior liens upon such property. (R. S. § 3186; May 29, 1928, c. 852, § 613, 45 Stat. 876.)

(b) Subject to such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax may issue a certificate of discharge of any part of the property subject to the lien if there is paid over to the collector in part satisfaction of the liability in respect of such tax an amount determined by the Commissioner, which shall not be less than the value, as determined by him, of the interest of the United States in the part to be so discharged. In determining such value the Commissioner shall give consideration to the fair market value of the part to be so discharged and to such liens thereon as have priority to the lien of the United States. (R.S. §3186; May 10, 1934, 11:40 a.m., c. 277, §509, 48 Stat. 757.)

Sec. 1565. A certificate of release or of partial discharge issued under this sub-chapter shall be held conclusive that the lien upon the property covered by the certificate is extinguished. (R.S. §3186; May 29, 1928, c. 852, §613, 45 Stat. 876.)

Sec. 1566. The Commissioner, with the approval of the Secretary, may by regulation provide for the acceptance of a single bond complying both with the requirements of section 272 (j) (relating to the extension of time for the payment of a deficiency) and the requirements of sub-section (b) of section 1563. (R.S. §3186; May 29, 1928, c. 852, §613, 45 Stat. 876.)

Sec. 1567 Sections 1563, 1564 (a), 1565, and 1566 shall apply to a lien in respect of any internal-revenue tax, whether or not the lien is imposed by this subchapter. (R.S. §3186; May 29, 1928, c. 852, §613, 45 Stat. 876.)

Sec. 64a, U.S.C.A. Title 11 Sec. 104:

Sec. 104. DEBTS WHICH HAVE PRIORITY.

(a) The court shall order the trustee to pay all taxes legally due and owing by the bankrupt to the United States, State, county, district or municipality, in the order

of priority as set forth in paragraph (b) hereof: Provided, That no order shall be made for the payment of a tax assessed against real estate of a bankrupt in e ess of the value of the interest of the bankrupt estate therein as determined by the court. Upon filing the receipts of the proper public officers for such payments the trustee shall be credited with the amounts thereof, and in case any question arises as to the amount or legality of any such tax the same shall be heard and determined by the court.

(b) The debts to have priority, in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estates, and the order of payment shall be (1) the actual and necessary cost of preserving the estate subsequent to filing the petition; (2) the filing fees paid by creditors in involuntary cases, and, where property of the bankrupt, transferred or concealed by him either before or after the filing of the petition, shall have been recovered for the benefit of the estate of the bankrupt by the efforts and at the expense of one or more creditors, the reasonable expense of such recovery; (3) the cost of administration, including the fees and mileage payable to witnesses as now or hereafter provided by the laws of the United States, and one reasonable attorney's fees, for the professional services actually rendered, irrespective of the number of attorneys employed, to the petitioning creditors in involuntary cases while performing the duties herein prescribed, and to the bankrupt in voluntary and involuntary cases, as the court may allow; (4) where the confirmation of composition terms has been refused or set aside upon the objection and through the efforts and at the expense of one or more creditors, in the discretion of the court, the reasonable expenses of such creditors in opposing such composition; (5) wages due to workmen, clerks, traveling or city salesmen, or servants, which have been earned within three months before the date of the commencement of the proceedings, not to exceed $600 to each claimant; (6) taxes payable under paragraph (a) hereof and (7) debts owing to any person who by the laws of the States or the United States is entitled to priority: Provided, That the term "person" as used in this section shall include corporations, the United States and the several States and Territories of the United States.

(c) In the event of the confirmation of a composition being set aside, or a discharge revoked, the property acquired by the bankrupt in addition to his estate at the time the composition was confirmed or the adjudication was made shall be applied to the payment in full of the claims of creditors for property sold to him on credit, in good faith, while such composition or discharge was in force, and the residue, if any, shall be applied to the payment of the debts which were owing at the time of the adjudication. (July 1, 1898, c. 541, sec. 64, 30 Stat. 563; Feb. 5, 1903, c. 487, §14, 32 Stat. 800; June 15, 1906, c. 3333, 34 Stat. 267; May 27, 1926, c. 406, § 15, 44 Stat. 666.

CONSTITUTION OF MICHIGAN

Sections 20 *and* 25 *of Article VIII:*

Sec. 20. The legislature shall provide by a general law for the incorporation of cities, and by a general law for the incorporation of villages; such general laws shall limit their rate of taxation for municipal purposes, and restrict their powers of borrowing money and contracting debts.

Sec. 25. No city or village shall have power to abridge the right of elective franchise, to loan its credit, nor to assess, levy or collect any tax or assessment for other than a public purpose. Nor shall any city or village acquire any public utility or grant any public utility franchise which is not subject to revocation at the will of the city or village, unless such proposition shall have first received the affirmative vote of three-fifths of the electors of such city or village voting thereon at a regular or special municipal election; and upon such proposition women taxpayers having the qualifications of male electors shall be entitled to vote.

Section 2 of Article X:

Sec. 2. The legislature shall provide by law for an annual tax sufficient with other resources to pay the estimated expenses of state government, the interest on any state debt and such deficiency as may occur in the resources.

STATUTES OF MICHIGAN

Sections 2230, 3429, 3500 *and* 3746, *Compiled Laws*, 1929:

Section 2230. (Sec. 3). Each city charter shall provide:

* * * * *

(f) That the subjects of taxation for municipal purposes shall be the same as for state, county and school purposes under the general law;

* * * * *

(i) For the levy, collection and return of state, county and school taxes in conformity with the general laws of the state, except that the preparation of the assessment roll, the meeting of the board of review, and the confirmation of the assessment roll may be at such times as shall be provided in the city charter;"

* * * * *

Sec. 3429. The taxes thus assessed shall become at once a debt due to the township, city, village and county from the persons to whom they are assessed, and the amounts assessed on any interest in real property shall, on the first day of December, for state, county, village or township taxes or upon such day as may be heretofore or hereafter provided by charter of a city, become a lien upon such real property, and the lien for such amounts, and for all interest and charges thereon, shall continue until payment thereof. And all personal taxes hereafter levied or assessed shall also be a first lien, prior, superior and paramount, on all personal property of such persons so assessed from and after the first day of December in each year for state, county, village or township taxes or upon such day as may be heretofore or hereafter provided by charter of a city, and so remain until paid, which said tax liens shall take precedence over all other claims, encumbrances and liens upon said personal property whatsoever, whether created by chattel mortgage, title retaining contract, execution, or upon any other final process of a court, attachment, replevin, judgment or otherwise, and whether such liens, claims and encumbrances created by chattel mortgage, title retaining contract, execution or

upon any other final process of a court attachment, replevin, judgment, or otherwise, become effective prior to the effective date of this act or subsequent thereto, and no transfer of personal property assessed for taxes thereon shall operate to divest or destroy such lien, except where such personal property is actually sold in the regular course of retail trade. The personal property taxes hereafter levied or assessed by any city shall be a first lien, prior, superior and paramount to any other claims, liens and encumbrances whatsoever upon the personal property assessed as herein provided, any provisions in the charter of such cities to the contrary notwithstanding.

Section 3500. (Sec. 107). This act shall be applicable to all cities and villages where not inconsistent with their respective charters." * * *

* * * * *

Section 3746. (Sec. 1.) That whenever the collector of internal revenue for any district in the United States, or any tax collecting officers of the United States having charge of the collection of any tax payable to the United States, shall desire to acquire a lien in favor of the United States for any tax payable to the United States against any property, real or personal, within the state of Michigan pursuant to section three thousand one hundred eighty-six (3186) of the revised statutes of the United States, he is hereby authorized to file a notice of lien, setting forth the name and the residence or business address of such taxpayer, the nature and the amount of such assessment, and a description of the land upon which a lien is claimed, in the office of the register of deeds in and for the county or counties in Michigan in which such property subject to such lien is situated; and such register of deeds shall, upon receiving a filing fee of fifty (50) cents for such notice, file and index the same in a separate book, entitled "Record of United States Tax Liens," indexing the same according to the name of such taxpayer as stated in the notice; all in pursuance of said section three thousand one hundred eighty-six (3186) of the revised statutes of the United States.

CHARTER, CITY OF DETROIT

Sections 10 *and* 21, *Chapter IV, Title VI (Old Charter)*:

Sec. 10. On completion of the list contained in the sales books, the city treasurer shall cause a notice to be published in the official daily newspaper for the city, once a week for four successive weeks, and posted in three or more public places in each assessment district. Such notice shall require the owners or occupants of, or parties interested in such lands, tenements, hereditaments or premises, to pay such assessment or tax. Such notice shall state that if default be made in making such payment, such real estate will be sold at public auction, at a day and place to be specified in said notice, for the lowest term of years at which any person shall offer to take the same in consideration of advancing and paying such assessment or tax, with the additions provided in this chapter, and the cost and expenses of advertising.

Sec. 21. It shall be the duty of the controller to bid in for the city, for a term of ninety-nine years, at any sale of real estate for assessments or taxes, every lot of land or premises for which no person shall offer to bid. If any purchaser shall refuse or neglect to pay the sum or sums bid by him, within the time and under the regulations prescribed by the common council, such bids shall inure to the use and benefit of the city, if the council shall so determine. Upon all such bids certificates of sale may be executed by the controller to the city attested by the city clerk and acknowledged in the same manner as provided in other cases of sale for assessment or taxes. In all cases of sales for special assessments the property so bid in for the city may at the option of the council be held in trust for the person or contractor in whose behalf such assessment shall have been made, or his assignee, or upon payment to such person or contractor of the amount for which such property shall have been bid in, the city may, as in case of the general tax, become the owner of the tax title or lease thus obtained and may dispose of the same as if obtained under a like sale for any general tax.

Sections, 9, 10, 11, 18, 19 and 21, Chapter IV, Title VI, (new charter):

Sec. 9. As soon as necessary each year before the annual sale the city treasurer shall in the column provided in the tax rolls list the amount of the unpaid real estate taxes as augmented. The total of the augmented tax with interest as herein provided in section eight (8) shall thereafter be the amount required to be paid for the tax on any description before the sale, as herein provided. In the tax rolls there shall also be a column in which the Treasurer shall enter the name of the purchaser of any description when the same shall have been sold.

Sec. 10. On completion of the list contained in the tax rolls of the unpaid taxes as augmented the city treasurer shall cause one notice to be published in a daily newspaper of general circulation in the City of Detroit, and posted in three or more public places in each assessment district. Such notice shall be published at least thirty days prior to the date of the sale and the newspaper notice shall contain a description of the property upon which the unpaid tax or assessment constitutes a lien, but need not contain the name of the owner of such property, or person obligated to pay such tax or assessment, or the amount of such tax or assessment. Such notice shall state that if default be made in making such payments, the lien of the city and the liability for such tax or assessment will be sold to the city of Detroit or, if provided by resolution of the Common Council, at public auction to the highest bidder, but for not less than the amount of said tax or assessment, interest and penalty thereon, on the second Tuesday in June of that year at the office of the city treasurer and continuing daily thereafter until all descriptions are offered. Following the publication of such notice containing a description of the property upon which the unpaid tax or assessment constitutes a lien, a notice shall be published once a week for four successive weeks in a daily newspaper of general circulation in the city of Detroit stating the date of the sale of the tax or assessment lien and advising that a copy of the list of descriptions of property involved in the same may be obtained at the office of the city treasurer.

Sec. 11. If the owner or occupant of, or parties in interest in such real estate, do not pay such assessment or tax, with costs, additions and charges within the period herein prescribed, then the city treasurer shall without further notice cause the lien of the city and the liability for such tax or assessment to be sold to the city of Detroit by bid of the controller unless provided by resolution of the common council that the same shall be sold at auction to the highest bidder thereof, but in either case the sale shall be for not less than the amount of said tax, interest and penalties thereon. The purchaser shall be required to pay to the city treasurer the amount of all previous bids then held by the city together with such interest and penalty from the time of such previous sale as the council shall direct: Provided, that such interest shall not exceed the amount as provided in section eight hereof or as provided in section seventeen hereof if more than two years have elapsed from and after the date of such previous sale. Should any such tax lien be sold for an amount over and above the tax liability with all interest and penalty thereon such excess shall be returned to the owner of the property on which such tax or assessment liability constitutes a lien, or the person liable for the payment of such tax or assessment by the treasurer or in the event of a dispute concerning the person entitled thereto, the same shall be paid by the treasurer to the person or persons held by a court of competent jurisdiction to be entitled to such excess. (As amended October 8, 1935. In effect October 15, 1935.)

Sec. 18. Should such tax lien and liability be still unpaid two years succeeding the date of its sale, the holder thereof (including the City of Detroit acting by its controller), in addition to such other remedies as may exist or be given by law, shall have the right, then or at any time thereafter, to file in the circuit court of Wayne County a bill in chancery to foreclose same. The holder of several tax liens on the same or different parcels of real etsate may file a single bill in chancery to foreclose the liens on the parcel or several parcels of real estate subject thereto. Such bill and the procedure thereon shall conform to the law in respect to foreclosure in chancery of liens on real estate other

than mortgage or other liens having special statutory provisions applicable thereto. Costs, including attorney fees, against either party may be fixed in the bill in chancery to foreclose the liens on the several parcels of real estate subject thereto. Upon the filing of such bill the court shall issue summons or other process for appearance as in other chancery cases or in lieu thereof either or both may make and enter an order for appearance against all defendants or several orders for appearances against different groups of defendants arranged as may be convenient and such order or orders shall be published or served (if there shall be more than one order one or more may be served and one or more published), as provided by law in case of absent defendants and if published a copy thereof shall in addition be sent by registered mail with the postage thereon fully prepaid to the last known address of the person or persons appearing by the records in the office of the register of Deeds of the County of Wayne to be the latest grantee or grantees in the regular chain of title of such lands or of any interest therein at the date of the filing of such bill of complaint and to the person or persons, if any there be, in the actual open possession of such parcel of land at the date aforesaid, and to the holder of record of any tax lien for the latest year's taxes then appearing of record in the office of the city treasurer or latest deed conveying title derived from such tax lien appearing of record in the office of the register of deeds and to the mortgagee or mortgagees named in all undischarged recorded mortgages or to any assignee or assignees thereof of record at the date aforesaid and to the holder of record of all undischarged record liens. The decree in such suit, if in favor of the holder of the tax lien, shall provide that possession of the premises subject thereto shall forthwith be given to him, unless the amount of the decree and all costs be paid within sixty days from its date, and shall award to the plaintiff a writ of assistance and any other process requisite to obtain possession. The decree shall not be entered before the expiration of one hundred and twenty days from the filing of the bill. There shall be no redemption period under such decree beyond said sixty days. Appeal may be taken on such decree in the same manner as

an appeal is taken in other chancery cases, but an appeal as to the lien on any parcel or by any defendant shall not affect the proceedings on any other parcel or defendant as to which there has been no appeal. The decree, if in favor of the plaintiff and if it is not paid within said sixty days and if there is no appeal, shall be conclusive as to the title and right of possession of the plaintiff, and shall direct the controller to execute and deliver a deed in appropriate form to the plaintiff which shall vest in the plaintiff absolute title in fee as against all persons claiming estate or interest whether arising or existing prior to the time such tax first became a lien or subsequent thereto: Provided that any state or county taxes or assessments that have been bid to the state or remain unpaid in the office of the auditor-general or county treasurer whether the lien for such taxes or assessments became a lien prior to or subsequent to the tax lien under foreclosure, estates or interests arising from taxes or assessments becoming a lien subsequent to the lien under foreclosure on the property described in such deed, and any restrictions in respect of building or use in common with other property in the immediate neighborhood, shall not be affected by such sale foreclosure and deed.

If the court in such procedure to foreclose the tax or assessment lien shall find or if appeal is taken and it is determined that the sale of the same to the purchaser (other than the City of Detroit by bid of the controller), was void, the City of Detroit shall refund to the purchaser thereof the amount of his bid together with interest thereon at the rate of five per cent. per annum. (As amended Oct. 10, 1933. In effect Oct. 16, 1933).

Sec. 19. The real estate deeded to the city under a foreclosure of its tax lien may be used by the city for municipal purposes or may be leased, sold, conveyed, transferred or disposed of by the common council or the lease, sale, conveyance, transfer or disposal of such real estate may be authorized by the common council under such terms and conditions as they may prescribe. (As amended Oct. 10, 1933. In effect Oct. 16, 1933.)

Sec. 21. At every sale it shall be the duty of the city controller to bid in for the city, at the amount thereof, the tax lien on every parcel of land or premises sold, except those parcels offered for sale at public auction to the highest bidder as provided by resolution of the common council which parcels shall also be bid in by the controller, if no person shall make a bid for the same. Upon all such bids by the controller certificate of sale may be executed by the treasurer to the city and acknowledged in the same manner as provided herein in other cases of sale. The city shall have all the rights and remedies herein given to private purchasers of tax liens. In all cases of sales for special assessments the lien so bid in for the city may at the option of the council be held in trust for the person or contractor in whose behalf such assessment shall have been made, or by his assignee, or upon payment to such person or contractor of the amount for which such lien shall have been bid in, the city may, as in the case of the general tax, become the owner of the tax lien and may dispose of the same as if obtained under a like sale for any general tax. All tax liens, bid in by the city, shall be payable at any time before foreclosure thereof upon the payment of the amount of the tax with interest and penalties as provided in sections sixteen and seventeen hereof. (As amended October 8, 1935. In effect October 15, 1935.)